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February 15, 2017

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Ex Parte* Filing of the American Cable Association – Review of the Part 32
Uniform System of Accounts, WC Docket No. 14-130**

Dear Ms. Dortch:

The American Cable Association (“ACA”) files this *ex parte* letter in the above-referenced docket to urge the Federal Communications Commission (“FCC” or “Commission”) to adopt measures to ensure that price cap local exchange carriers’ (“LECs”) rates for access to their poles and conduit remain reasonable should it end the mandatory use of data based on Part 32 Uniform System of Accounts (“USOA”) for purposes of calculating such rates. In brief and as elaborated on herein, should it end use of part 32 data to calculate pole attachment rates, the Commission should adopt the proposal submitted by NCTA – The Internet & Television Association (“NCTA”) to freeze incumbent price cap carriers’ pole attachment rates at current (*i.e.*, 2016) levels calculated using such data.¹ If the Commission chooses to adopt the transition proposed by the incumbent carriers in lieu of a rate freeze,² at least it should provide that: incumbent carriers cannot increase rates for the first five years of the transition; incumbent

¹ Letter from Steve Morris and Jennifer McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (Feb. 8, 2016) (“NCTA Letter”).

² *See, e.g.*, Letter from Timothy Boucher, CenturyLink, on behalf of AT&T, Verizon, and CenturyLink to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (Jan. 26, 2017) (“January Letter”); Letter from Ian Dillner, Verizon, on behalf of AT&T, CenturyLink and Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (Dec. 5, 2016).

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carriers must maintain and produce part 32 data during this five year period so it can be compared to rates that would result from the use of Generally Accepted Accounting Principles (“GAAP”); and, incumbent carriers should file with the Commission annually underlying data to show how they derive rates.

Certain incumbent LECs have proposed in *ex parte* submissions filed in the past several months to end the requirement that price cap carriers comply with the USOA, allow the use of GAAP accounting by price cap carriers, and impose, if needed, targeted accounting requirements.³ A potential consequence of such a ruling would be that the data used for calculating reasonable pole attachment fees for price cap carrier pole owners, under the formula that the Commission adopted over fifteen years ago, would no longer be available. Further, pole attachment rates may climb significantly in the face of such a change. Indeed, the price cap carriers acknowledge that this may cause the rates for pole attachments, typically under ten dollars today, to go up by several dollars, a substantial rate hike.⁴ This impact would be especially felt by ACA cable and telecommunications provider members who have a great many attachments on price cap LEC poles.

ACA submits that NCTA correctly voices concern about the adverse impact that such a change would have on deployment of cable and telecommunications facilities.⁵ Just as Chairman Pai and the Commission are seeking to reduce the barriers to full deployment of high performance networks, the price cap carriers’ proposal is retrograde. Allowing price cap carriers to set pole attachment and conduit rates using GAAP accounting principles would fly in the face of these laudable objectives. The proponents for moving to GAAP accounting have provided no assurances that attachment rates would remain reasonable under GAAP accounting; they have offered no estimate of the magnitude of the rate changes which would result, thereby making it

³ See *January Letter*.

⁴ In the *January Letter*, the price cap carriers contend, as a theoretical matter, that rates could also go down under GAAP accounting, but they do so half-heartedly and the *January Letter* appears to acknowledge that it is much more likely that rates will increase. As evidenced by USTelecom’s February 13th *ex parte*, its contention that GAAP accounting will result in lower rates continues to be at best dubious. See Letter from B. Lynn Follansbee, Vice President – Law & Policy, USTelecom, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 14-130 (Feb. 13, 2017) (“USTelecom February Ex Parte”) (“Indeed, under the proposal in many instances, pole attachment rates are expected to be lower than those derived under Part 32.”).

⁵ See *NCTA Letter*.

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impossible for the Commission to consider the impact on pole rates, which are a major deployment cost for cable companies and competitive telecommunications carriers.⁶

Moreover, unlike Part 32 data, GAAP data is not made public, and thus do not constitute consistently-derived, public and verifiable data sources by which pole attachers can analyze and challenge, if need be, the propriety of pole rate calculations in comparison with the Commission's rules. Furthermore, even if the data were made public, under GAAP, certain cost categories would not have clear correspondences with the current Part 32 accounts, making it difficult to even use the pole attachment formulas in the wake of the abandonment of Part 32 account inputs for purposes of establishing pole attachment rates.⁷

To make changes to the pole attachment regulatory framework through the back door, as the price cap LECs effectively propose, and without an assessment of the impact, would undermine the progress the Commission has made to make pole rates more rational and to bring telecommunications carrier rates down to parity with materially lower cable rates.⁸ Indeed, Chairman Pai observed in 2015 after the Commission's most recent action lowering rates that "ISPs and their customers will [still] be paying too much for pole attachments" since they reimburse the pole owners for capital expenses "even when the pole owner has already recovered them separately."⁹ He advocated for even lower rates. But the *January Letter* of the price cap LECs and the *USTelecom February Ex Parte* only serve to highlight that there is a real danger that the price cap carriers' proposal would result in substantially increased rates.

To resolve such concerns, NCTA proposes that the Commission, to the extent it grants price cap carriers the requested relief from filing and using Part 32 data to set pole rates, freeze

⁶ *Implementation of Section 224 of the Act*, WC Docket No. 07-245, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Order on Reconsideration, 30 FCC Rcd 13731 (2015) ("Pole Reconsideration Order").

⁷ As noted in the *NCTA Letter*, "[a] vague assurance that GAAP accounts will be apportioned and loaded in some undefined way does not provide sufficient confidence that pole attachment rates can continue to be disciplined and that disputes can be resolved with the minimum of Commission involvement." *NCTA Letter* at 4.

⁸ The 2010 National Broadband Plan underscored that, "[t]o support the goal of broadband deployment, rates for pole attachments should be as low and as close to uniform as possible." See *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 110, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan).

⁹ *Pole Reconsideration Order*, Concurring Statement of Commissioner Ajit Pai, *id.* at 13774.

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incumbent price cap carriers pole attachment rates at current (*i.e.*, 2016) levels calculated using such data.¹⁰ ACA agrees with this freeze as the only possible way to ensure that the rates would be reasonable in the short run.¹¹ ACA also concurs that the Commission should take steps in the long run – meaning before this freeze sunsets – to ensure that pole attachment rate disputes can be resolved in a reasonable and objective manner going forward. This may require a further rulemaking to establish a GAAP-based pole rate methodology that can be objectively applied and verified before the freeze is lifted. Having such a set of objective criteria in place to make disputes more efficient for complainants is essential to promote deployment of high performance networks. Finally, as discussed at the beginning of this *ex parte*, should the Commission adopt the incumbent LECs' proposed transition plan in lieu of the NCTA proposed rate freeze, there are several measures it should adopt to help keep pole rates from increasing unreasonably. First, the Commission should not permit incumbent carriers to increase rates for the five years of the transition. Second, it should require incumbent carriers to maintain and produce part 32 data during this five year period so it can be compared to rates that would result from the use of GAAP. Third, it should require incumbent carriers to file annually with the Commission underlying data to show how they derive rates.

¹⁰ See *NCTA Letter* at 4-5.

¹¹ Alternatively, price cap carriers could voluntarily continue to use Part 32 account data for pole attachment rate development.

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As required by section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this written *ex parte* presentation is being filed with the Commission Secretary's office in the above-referenced docket.

Sincerely,



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